

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

2024:PHHC:128163-DB



(209)

CWP-9350-1998

Date of Decision: 25.09.2024

Gram Panchayat, Village Taana through its
Administrator

--Petitioner

Versus

Joint Development Commissioner & others

--Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

Present:- Mr. Hardip Singh, Advocate for the petitioner.

Ms. Arundhati Kulshrestha, AAG, Punjab.

Mr. Chetan Salathia, Advocate for respondent no.3.

G.S. SANDHAWALIA.J (Oral)

1. The present writ petition is directed against the order dated 22.05.1997 (Annexure P-8) passed by the Joint Development Commissioner vide which appeal filed by respondent no.3-Jarnail Singh was allowed and he was declared the owner of the land under Section 11 of the Punjab Village Common Land (Regulation) Act, 1961 (for short the Act). The relevant portion, for the reasons which weighed for non-declaration of the ownership of the land measuring 25 kanals 10 marlas situated in village Tana, Tehsil & District Fatehgarh Sahib has been reproduced in the next paragraph. The appellate authority was hearing the appeal against the order dated 10.11.1995, whereby the application of Jarnail Singh had been dismissed regarding the land falling in Khasra No.23//13(8-0), 14(8-0), 18(8-0), 23(8-0) situated in village Taana, Tehsil & District Fatehgarh Sahib.

2. One of the reasons, which weighed with the Collector was that the land was being leased out while referring to Annexures R-2 to R-4 and there was no evidence on the file that the applicant was *Khewatdar* of the village and was in possession of the land prior to 26.01.1950 or at that time the land was in his possession or his fore-fathers or ancestors. The relevant portion reads as under:-

“After hearing the arguments of both the counsel for the parties and going through the documents on record Ex.R2 to R.4 it is very well clear that gram panchayat is leasing out the land in dispute and there is no evidence on the file that applicant as khewatdar of the village is in possession of the land prior to 26 January, 1950 or at that time the land was in his possession or his fore-fathers or ancestor, there is no evidence to that effect and as per Panchayat record/revenue record the applicant is not in possession of the land. As such the applicant has no concern or connection with the disputed land. The disputed land is being managed and controlled by Gram Panchayat, Taana. So the application of the applicant is hereby dismissed.

Order pronounced in open court. The file be consigned to record room.”

3. Learned counsel for respondent no.3-Gram Panchayat has referred to the fact that on an earlier occasion Jarnail Singh had got an order dated 29.11.1989 in his favour, whereby the Collector had directed the lease of the land which was completed on 31.05.1990, could be kept in his possession. The appeal filed by the Gram Panchayat against the said order was disposed of as infructuous on 05.04.1991 (Annexure P-1). Similarly, it has been pointed out that an appeal had been preferred by respondent no.3 against the order of the Collector dated 04.09.1990, wherein lease of the land had been rejected. The case of the appellant in the order dated

14.08.1991 (Annexure P-2) challenging the resolution and claim that they had taken the land on lease and the said argument raised in the said proceedings before the Director, Rural Development & Panchayat, Punjab exercising the powers of Commissioner, reads as under:-

“That appellants are present in person and have prayed that they took the land in dispute on lease. The period of lease is expiring in the year 1989-90. The gram panchayat by passing resolution on 18.2.90 has extended the lease for two years. This resolution has been passed unanimously. They have not threatened the gram panchayat; because they have spent Rs.20,000/- on improvement of the land and have made the land cultivable. Taking into consideration their labour, the gram panchayat extended the lease for two years. The presence of BDO was only necessary if the land have been leased out in open auction. Extension of two years in lease period is correct from angle point of view. They should not be evicted from the land in dispute.”

4. Eventually vide order dated 14.08.1991 the appeal was dismissed on the ground that the extension was illegal. In such circumstances, once Jarnail Singh himself has been holding out in separate proceedings that he was a lessee and the Collector had relied upon certain documents Annexures R-2 to R-4, it was imperative for the higher authority to have given a finding as to how the Collector was not justified in accepting the petition. Even a perusal of the order passed by the Appellate Authority talks about the record on the file but there is no reference as to which document, he is referring to.

5. In such circumstances we are of the considered opinion that the order passed by the Appellate Authority can be termed as a 'non-speaking order'. Reliance can be placed upon the judgement in case of **M/s Kranti**

Associates Pvt. Ltd. & another Vs. Shri Masood Ahmed Khan & others,
2010(4) RCR (Civil) 600 wherein it has been held that even if an administrative decision is taken which has implications, it has to contain reasons. The relevant part reads as under:-

“51. Summarising the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to

demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731- 737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

6. Accordingly, we set aside the order dated 27.05.1992 and direct the Appellate Authority to rehear Appeal No.71/96 titled as 'Jarnail Singh

Vs. Gram Panchayat Tana through its Sarpanch' afresh and decide the issue keeping in view the documents inter se the parties and the stand taken and whether the land which Jarnail Singh had taken on lease, was the same land on which he laid claim of having the title. Accordingly, the present writ petition is partly allowed to that extent.

7. Parties to put in appearance before the Joint Development Commissioner, IRD, Punjab on 11.11.2024.

(G.S. SANDHAWALIA)
JUDGE

25.09.2024
lucky

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No